

October 21, 2010

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

OWNER: MVH-Renton Properties, LLC
c/o Aaron Vederoff
7711 – 31st Avenue NE
Seattle, WA 98115

APPLICANT/CONTACT: Clifford E. Moon
MVH-Renton Properties, LLC
16261 36th Avenue NE
Lake Forest Park, WA 98155

North Renton Professional Building
LUA-10-003

LOCATION: 115 Pelly Avenue N

SUMMARY OF REQUEST: The applicant is requesting a Rebuild Approval Permit for a non-conforming medical office use and office building located in the R-8 and R-10 zones.

SUMMARY OF ACTION: Development Services Recommendation: Deny

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on September 21, 2010.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the September 28, 2010 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, September 28, 2010, at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<u>Exhibit No. 2:</u> Neighborhood Detail Map
<u>Exhibit No. 3:</u> Google Map Image	<u>Exhibit No. 4:</u> Site Plan Sketch

<u>Exhibit No. 5:</u> Photograph of East Face of Building	<u>Exhibit No. 6:</u> Photograph of West Face of Building
<u>Exhibit No. 7:</u> Photograph of North Face of Building	<u>Exhibit No. 8:</u> 1997 Certificate of Conditional Approval
<u>Exhibit No. 9:</u> Restrictive Covenant for the 1997 Conditional Approval	<u>Exhibit No. 10:</u> Zoning Map showing R-8 and R-10 zone designations
<u>Exhibit No. 11:</u> Photograph looking Northeast showing the Family Medical Clinic just south of the Renton Professional Building	<u>Exhibit No. 12:</u> Photograph looking West on Pelly Avenue N, shows Clinic on the south with a flat roof.
<u>Exhibit No. 13:</u> Photograph looking East on Pelly Avenue N showing the Renton Vision Clinic also with a flat roof.	<u>Exhibit No. 14:</u> Photograph looking Northwest showing the alley side of the Renton Professional Building
<u>Exhibit No. 15:</u> Typed statement given by Mr. Vederoff.	

The hearing opened with a presentation of the staff report by Vanessa Dolbee, Senior Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The applicant is requesting a rebuild approval permit for a non-conforming medical office use. The building is located at 115 Pelly Ave N, the parcel is a split zone, the northern portion is R-8 and the southern is R-10.

This permit, if approved, would allow the non-conforming structure to be remodeled, re-established or rebuilt even though the costs of the re-establishment of the use would exceed 50% of the most recently appraised value. Without this permit the businesses within the structure would be permitted and allowed to remain. The applicant would be subject to the RMC in terms of what they can do with maintenance and rebuild.

The Examiner questioned if a tenant moved out and another one moved into that space, would the space not be considered vacated.

Ms. Dolbee stated that that was correct.

The site is located on the west side of Pelly Avenue N and is north of N 1st Street, which is in the North Renton Neighborhood.

This building was established in 1957 as a clinic and contains various medical offices. The building is approximately 3,921 square feet with 19 parking stalls in the northern parking lot and some diagonal stalls off the alley in the rear. Access to the site is via Pelly Ave N or the alley which intersects with North 1st Avenue. There is mature landscaping along the front of the property and some landscaping on the north side of the building. No changes to the structure have been proposed by the applicant as part of this permit.

North of the site is single-family residential homes zoned R-8, to the east is single-family residential homes with the exception of one piece of property which currently houses a vision clinic. To the south is the R-10 zone with an existing Renton Family Practice Clinic. On the west is more single-family residential buildings zoned R-10. The subject site is exempt from SEPA review because the structure currently exists and no changes are proposed.

There are two rebuild approval criteria; one for the non-conforming use and the second for the non-conforming structure. In reviewing the non-conforming use issue there are six factors to be considered and four must be complied with for approval; Community Need, the continuation of this use at its current location would result in an overconcentration of a particular use within the area surrounding the site; Location, the subject location is suitable for the existing use; Effect on Adjacent Property, no comments from surrounding neighbors were received, there is a large amount of mature landscaping along Pelly Ave N to screen the front of the building however, there is only a fence to the north and no screening is provided across the alley; Historical Significance, the building is not associated with a historical event or activity; Economic Significance, the subject building does not provide a substantial benefit to the community from employment or tax revenues; and timeliness with existing plans and programs. The approval of the Rebuild Approval Permit would result in a delay of the implementation of the City's Comprehensive Plan.

The criteria for a non-conforming structure include five criteria and three must have been satisfied in order to approve the permit; Architectural and/or Historic Significance, the existing office building does not represent a unique architectural style there are many office buildings with this style of architecture; Architectural Compatibility with Surrounding Structures, this building is not a part of a unified streetscape of similar structures that are unlikely to be replicated; Potential of Site for Redevelopment, the redevelopment of the subject site would be economically feasible; Condition of Building/Structure, the building has been well maintained and is not considered to be a threat to the public health, welfare or safety; Departure from Development Regulations, the existing building does not pose a threat to the public health, welfare or safety.

The North Renton Building complies with two of the six criteria for non-conforming use and two of the five criteria for non-conforming structure.

The Examiner questioned the fact that they did receive a permit back in 1997 which expired and they are now looking to re-new this permit.

Ms. Dolbee stated that was correct and that the criteria had not changed since that time. Under the existing code they can continue this use and they can continue to maintain the structure. If approved the Conditional Approval Permit would allow the structure to be re-built should, for example, the structure burn to the ground and the cost to rebuild the structure was beyond the cost of the assessed value.

Aaron Vederoff, 7711 31st Avenue NE, Seattle 98115 stated that he is one of three owners of the building. He manages the building, collects the rents and pays the bills. His comments were written out and covered only the points that the owners take issue with, either disagree or actually say they are not correct.

Item #1: Project Description/Background; there are 23 non-residential uses and buildings within the area. This building is the most outstanding, attractive and well maintained small commercial building in the area. It is important to get this permit approved; the understanding is that the use may continue without any problem. The dentist currently occupying the building entered into a conditional agreement to purchase the building but was advised by his attorney not to proceed because of the non-conforming status. The dentist is still interested in buying the building but not unless the Rebuild Approval Permit is renewed. There appears to be a question as to whether financing can be obtained without the ability to rebuild if more than 50% of the building is damaged.

Item #4a: Community Need; the ability for relocation seems to ignore the fact that this dental practice has been established in this location for over 50 years and is extremely established. Moving would create challenge and hardship.

Item #4e: Economic Significance; the current tenants do pay B&O tax and therefore provide economic benefit to the City.

Item #4f: Timelines with Existing Plans and Programs; it appears to be an extremely modest delay to the 100% implementation to the City's Comprehensive Plan. Further it appears that the City began the process of looking at the zoning for the area and it has been put on hold. It is possible that the new zoning would allow the outright use for a small office building.

Item #5a: Architectural and/or Historical Significance; the building is unique with the "U" configuration rather than the typical rectangle.

Item #5b: Architectural Compatibility with Surrounding Structures; the building does have a pitched roof, not a flat roof as stated in the report. The building is set back from the property lines on all four sides and is a valuable asset to the immediate neighborhood.

Item #5c: Site Potential for Re-Development; the site could be redeveloped with three units; it seems to be extremely unlikely to be done. There are six houses in the block with an assessed value ranging from \$119,000 to \$243,000; it is difficult to believe that someone would build new houses that would cost \$400,000 or more with the existing houses as neighbors.

Clifford Moon, 16261 36th Avenue NE, Lake Forest Park 98155 stated that he is also one of the owners and proceeded to show additional photos of the area. The Conditional Use permit that was part of the building expired in June 2007. The City was contacted in April 2007 to begin this process, it has taken three years to get to the hearing today. They would like to continue the current status of the building.

The Examiner stated that if the building was totally lost to fire or whatever, the expectation would be that the new construction would be upgraded to meet the existing codes. This issue is forced by the potential resale of the building where a purchaser would be subject to the same constraints as currently exist with redeveloping the property.

Mr. Vederoff stated if there was a complete burn down of the building, the concern as the City would be can somebody economically redevelop it with three housing units.

The Examiner stated that at the same time someone at that point in redeveloping a dental office clinic as a modern structure would also be very expensive as well as a loss of income while it is being developed. Those are the trade-offs, the code is designed to help move out non-conforming uses ultimately. This building is well maintained and there is no problem with that.

Mr. Vederoff continued stating that they were asking for the 10 year permit as previously. He has seen in other agreements such as this that there is no time limit. This seems unusual where a time limit is given.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:41 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Clifford E. Moon, filed a request for a Rebuild Approval Permit to allow replacement of a legal non-conforming use in the event of a substantial loss.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official determined that the proposal is exempt from environmental review.
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 115 Pelly Avenue North. The subject site is located on the west side of Pelly one parcel north of North 1st Street. An alley runs along the rear or west side of the parcel between Pelly and Wells Avenue North.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of single family and medium density multifamily uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned R-8 (Single Family - 8 dwelling units/acre) for the north portion and R-10 (Residential; 10 units per acre) for the south portion.
9. The subject site was annexed to the City with the adoption of Ordinance 156 enacted in May 1909.
10. There is R-10 zoning south and west of the subject site and R-8 zoning directly east across Pelly and north and northwest of the subject site.
11. Single family uses are located north, northeast and west of the subject site. Renton Vision Clinic is across the street in an R-8 parcel. Renton Family Practice Clinic is located directly south on another R-10 parcel.
12. The subject site is approximately 15,000 square feet. The existing building is approximately 3,921 square feet.
13. The building is a one-story, U-shaped building. The building has a pitched roof. The staff report noted it had a flat floor line.

14. The building is served by 19 on-site parking stalls and 5 parallel spaces on the street. There are 11 stalls located near the north property line. There is landscaping between the parking and the adjoining single family home. There are also stalls west of the building. These stalls directly back onto the alley. Single family uses are located on the west of the alley. Code does not permit direct maneuvering from an alley into parking for commercial uses. These alley-accessed parking stalls are legally non-conforming like the building and uses.
15. The site contains mature landscaping in front of the building both along the street and within the niche created by the U-shaped building. A fence and narrow landscape strip provides some separation along the north property line. There is no landscaping along the alley where the applicant has a series of parking stalls.
16. The purpose of a rebuild approval permit is to allow nonconforming uses and/or structures that became nonconforming as a consequence of Code amendments in June 1993 and thereafter, to be re-established and/or rebuilt in certain zoning districts where they would normally be prohibited because the costs associated with re-establishing the use and/or structure exceed fifty percent (50%) of their most recently assessed or appraised value prior to the loss or damage.
17. The City issued a Rebuild Approval Permit for the subject site in 1997 (City file# LUA97-044). This permit expired 10 years after its issuance on June 26, 2007.
18. The applicant has indicated that the current zoning has restricted the building's sale as a commercial entity and may encumber its refinancing. The applicant noted the unkempt nature of the alley for the properties west of the alley. There have been no complaints about the current use.
19. A density calculation is not required for this analysis. Staff estimated that if the property were redeveloped with some conforming residential uses there might be a potential for three units.
20. The development of one single family home would generate approximately 10 trips. Three residential units, depending on the nature of the use or uses, could generate approximately 30 trips. Staff estimates that the clinic would generate more traffic than one single family use and probably more than a three unit development.

CONCLUSIONS

1. Section 4-9-120 contains the criteria for approving a rebuild approval permit:

E REVIEW CRITERIA FOR NONCONFORMING USES:

The Reviewing Official may issue a rebuild approval permit only when the continuance of the use is determined to be in the public interest and such uses are: (1) found to be compatible with other existing and potential uses/structures in the general area; or (2) can be made to be compatible with the application of appropriate conditions. The Reviewing Official shall consider the following factors when considering a request for a rebuild approval permit for a nonconforming use. In order to grant the permit, at least four (4) of these factors shall be complied with:

1. Community Need: There shall be a community need for the proposed use at its present location; and the continuance of the nonconforming use should not result in either the

detrimental overconcentration of a particular use within the City or within the area surrounding the site.

2. Location: The existing location is or can be made suitable for the existing use.
3. Effect on Adjacent Property: The existing nonconforming use has not resulted in undue adverse effects on adjacent properties from noise, traffic, glare, vibration, etc., (i.e., does not exceed normal levels in these areas emanating from surrounding permitted uses).
4. Historical Significance: The existing use was associated with a historical event or activity in the community and as a result has historical significance.
5. Economic Significance: The existing use provides substantial benefit to the community because of either the employment of a large number of people in the community, the generation of considerable retail and/or business/occupation tax revenues to the City, or it provides needed affordable housing.
6. Timeliness with Existing Plans and Programs: Because of the anticipated market timing for permitted uses in the zone, retention of the existing nonconforming use would not impede or delay the implementation of the City's Comprehensive Plan.

F REVIEW CRITERIA FOR NONCONFORMING STRUCTURES:

The Reviewing Official may issue a rebuild approval permit only when the continuance of the structure is determined to be in the public interest and such structures are: (1) found to be compatible with other existing and potential uses/structures in the general area; or (2) can be made to be compatible with the application of appropriate conditions. The Community and Economic Development Administrator shall consider the following factors, when considering a request for a rebuild approval permit for a nonconforming structure. In order to grant the permit, he/she shall find that at least three (3) of the following criteria have been satisfied:

1. Architectural and/or Historic Significance: The structure represents a unique regional or national architectural style or an innovation in architecture because of its style, use of materials, or functional arrangement, and is one of the few remaining examples of this.
2. Architectural Compatibility with Surrounding Structures: The nonconforming building or structure was part of a unified streetscape of similar structures that is unlikely to be replicated unless the subject structure is rebuilt per, or similar to, its original plan.
3. Potential of Site for Redevelopment: Redevelopment of the site with a conforming structure is unlikely either because the size of the existing lot may be too small to be economical, or because the characteristics of adjacent permitted uses (that might normally be expected to expand to such a site) currently might preclude their expansion. Typically, economic hardship would not be considered for a variance, but is a consideration here.
4. Condition of Building/Structure: If nonconforming as to the provisions of the City's Building Code, the building or structure and surrounding premises have generally been well maintained and are not considered to be a threat to the public health, welfare, or safety, or they could be retrofitted so as not to pose such a threat.
5. Departure from Development Regulations: If nonconforming with the provisions of the City's development regulations, the building or structure does not pose a threat to the public health, welfare or safety, or could be modified so as not to pose such a threat. (Ord. 5450, 3-2-2009)

G DECISION OPTIONS:

The approving body may grant, with or without conditions, or deny a requested rebuild approval permit. Such a permit, if granted, typically would carry conditions with it pertaining to how a damaged structure would be allowed to redevelop. The approving body may, for example, limit the term and duration of the rebuild approval permit as well as impose conditions.

H CONDITIONS OF APPROVAL:

Conditions imposed by the approving body shall reasonably assure that nuisance or hazard to life or property will not develop. A rebuild approval permit for a nonconforming use and/or structure may, for example, be conditioned upon the provision and/or guarantee by the applicant that necessary public improvements, facilities, utilities and/or services needed to support the use/structure will be provided, or the provision of other features that would make the use/structure more compatible with its surroundings.

I EXPIRATION:

Conditions imposed relating to the duration of a permit for a use or structure should also reflect reasonable amortization periods for any substantial upgrades to the premises that are required by City Code.

2. This office has to reluctantly agree with staff's recommendation in this matter. There are two sets of criteria. One set of criteria refers to non-conforming "uses" while the other refers to non-conforming "structures." Those criteria that so carefully outline what is permissible do not sanction the permit the applicant has requested. It does not meet at least four of the criteria found above for use nor three criteria for structure. At the same time, this office has to reconfirm what staff reported regarding this building and the uses it houses - the building may be maintained in a normal fashion and the established uses and similar uses within it are all legally allowed to remain and may continue operation. Code and courts have generally encouraged the conversion of non-conforming structures and uses to conforming to current codes. Granting a permit to avoid conversion is not entertained lightly and Code provisions require that the criteria be appropriately satisfied. The use does not satisfy the criteria for approving the requested permit.

Non-Conforming Uses Criteria

3. While the use obviously serves the needs of patrons - both immediate neighbors and other patrons of the buildings and its uses, those needs can be served by a building and uses in the commercial zones found nearby. The nearby vicinity provides the CN zone a block north and east of the site, the CA zone a block east of the site or downtown Renton a block or two south of the site. There is no community need for the uses at this specific location. In addition, there are two other legal non-conforming uses in the immediate vicinity also serving medical patrons. One is immediately south of the subject site and another directly across Pelly east of the subject site. These uses together create an over-concentration of non-conforming uses in an area of residential zoning.
4. The use has been established and, admittedly, well-maintained in the area for more than 50 years. The use has not generated any complaints. The building is designed for its current uses. Landscaping helps the use blend into the area although there is little to screen the building's alley parking from its residential neighbors west of the alley. There is also limited separation between the north parking area and the adjacent single family home. The applicant's comments on the state of those neighboring properties across the alley could reflect neglect or just a reaction to being subjected to the applicant's parking lot across the alley.
5. The use has been established in its location for a long time and neighbors are probably use to it. The use does generate more traffic than a standard single family home and staff estimated it probably generates more traffic than a limited number of residential uses. A conforming residential use or uses would probably have less effect on neighboring properties but it does not appear that the use had adverse impacts on those adjacent uses.

6. While nicely maintained, neither the building nor contained uses have any historical or architectural significance. The uses are routine medical clinics.
7. Staff found that the building and its uses do not provide affordable housing. While it employs a complement of medical professionals and associates it does not provide retail uses and does not provide any substantial tax revenues either from occupation or sales taxes.
8. Finally, the timeliness of existing plans and code amendments suggests that the use should have been transitioned to a conforming use in 2007. Clearly, there has been no urgency in this area. The use is established and the applicant had a permit to allow restoration until June 26, 2007. Realistically, removing or renovating the existing building to provide residential uses will not occur if a permit were granted to allow reconstruction in the event of loss. Providing a use consistent with both the comprehensive plan's goals and the current zoning will not occur if a permit is granted. Frankly, it probably will not occur without a permit approval either as the use is still flourishing.

Non-Conforming Structures Criteria

9. The other criteria for non-conforming structure rebuild approval mirror in some cases the criteria found above. The building is neither architecturally nor historically significant.
10. The one-story building is larger than nearby single family homes in area although it is not overly tall. Yard conformity was not analyzed for this review but the building could be converted to residential uses with potentially non-conforming yards. The building is not part of a unified streetscape and does differ significantly from neighbor residential uses.
11. The applicant pointed out in the current economy that redevelopment to conforming residential uses would be unlikely in the near term. Staff noted that redevelopment of conforming uses is possible even if not an immediate result.
12. Again, this office has to emphasize that the building and its landscaping area well-maintained and would not contribute to adverse impacts on health, safety or welfare.
13. Finally, this office cannot ignore the precedent of granting the permit. Two other non-conforming uses are also located on this street. Approving this permit would create a precedent that would potentially lead to similar additional requests, thereby further delaying the transition of three uses to conforming land use patterns that area required by the comprehensive plan and the Zoning Code. The permit or permits do not satisfy the requisite criteria and therefore, the permit must be denied. If on appeal the City Council believes a permit is warranted, they might consider a reduced timeframe.

DECISION

The Rebuild Approval Permit is denied.

ORDERED THIS 21th day of October 2010.


FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 21th day of October 2010 to the parties of record:

Vanessa Dolbee
1055 S Grady Way
Renton, WA 98057

Clifford Moon
MVH – Renton Properties, LLC
16261 36th Avenue NE
Lake Forest Park, WA 98155

MVH – Renton Properties, LLC
7711 31st Avenue NE
Seattle, WA 98115

Elizabeth P. Stewart
232 Pelly Avenue N
Renton, WA 98057

TRANSMITTED THIS 21th day of October 2010 to the following:

Mayor Denis Law
Jay Covington, Chief Administrative Officer
Julia Medzegian, Council Liaison
Marty Wine, Assistant CAO
Gregg Zimmerman, PW Administrator
Alex Pietsch, CED Administrator
Jennifer Henning, Current Planning Manager
Stacy Tucker, Planning Division

Dave Pargas, Fire Marshal
Larry Meckling, Building Official
Planning Commission
Transportation Division
Utilities Division
Neil Watts, Development Services
Janet Conklin, Development Services
Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., November 4, 2010** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., November 4, 2010.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.

E4 - 8 T23N R5E W 1/2

F3 - 18 T23N R5E E 1/2

F4 - 17 T23N R5E E 1/2

G4 - 20 T23N R5E W 1/2

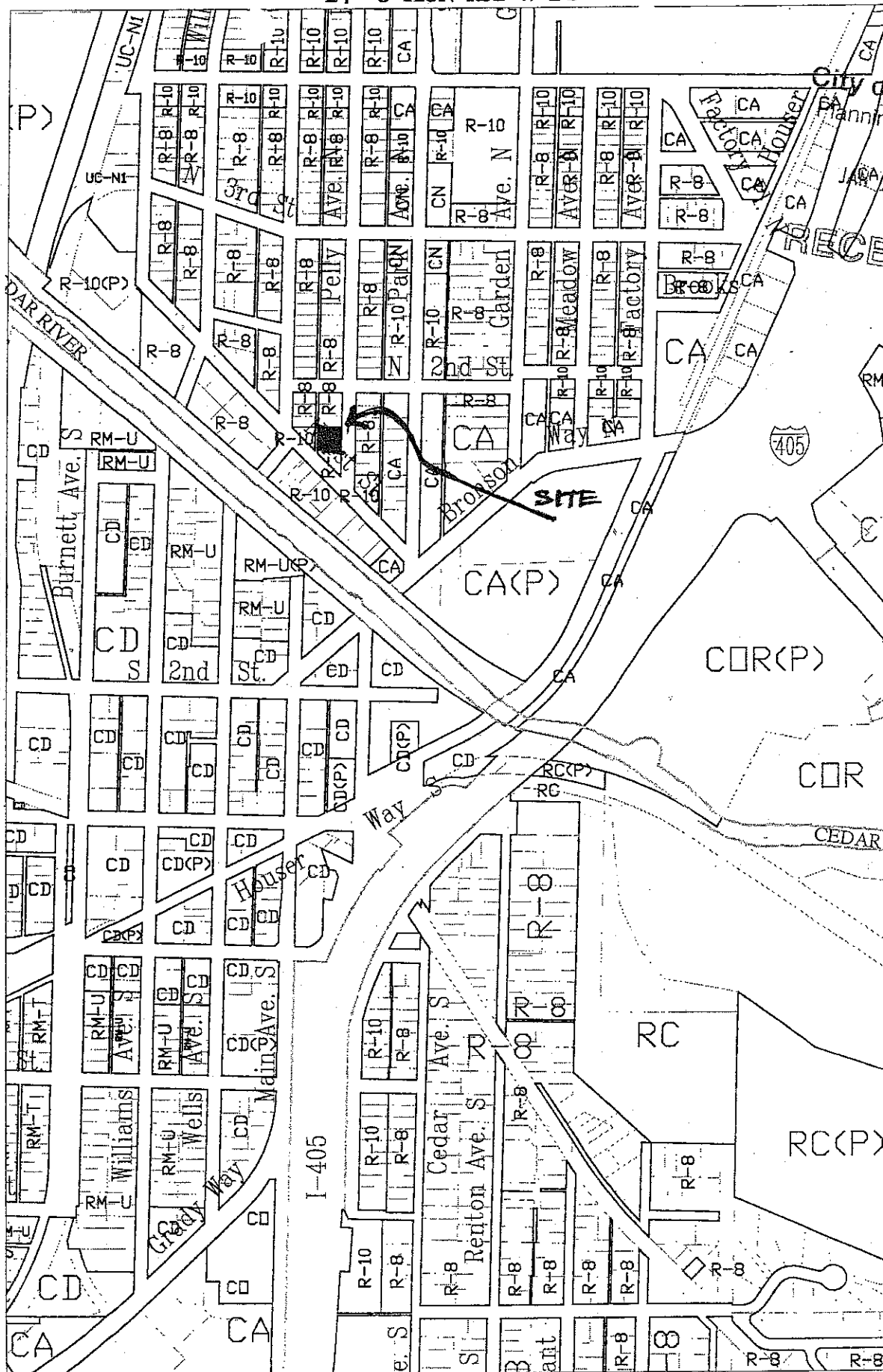
F4
17 T23N R5E W 1/2
5317



ZONING
P/B/PW TECHNICAL SERVICES
02/28/07

----- Renton City Limits

0 200 400
1:4800



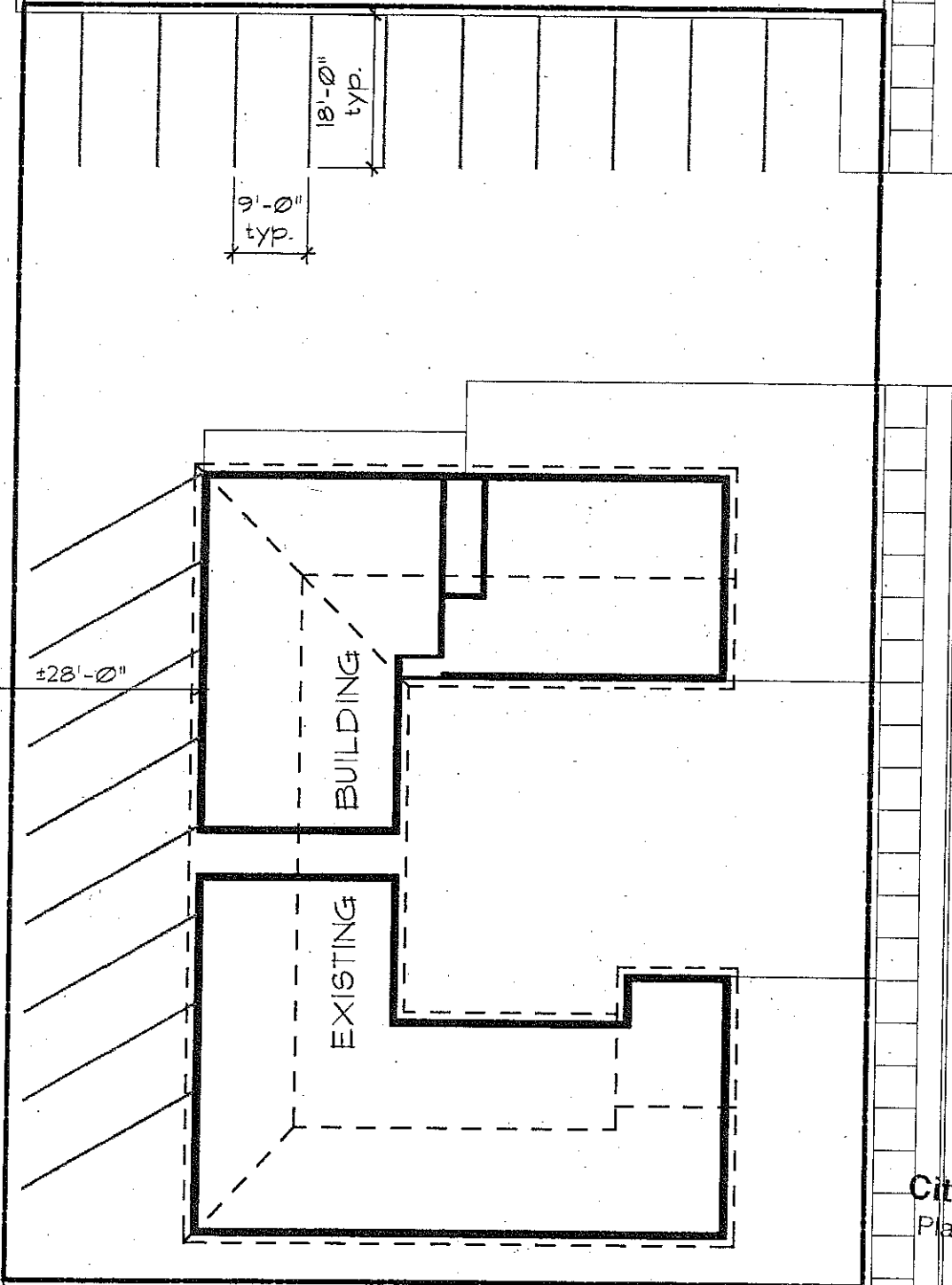
City of Renton
Planning Division

JAN 14 2010

RECEIVED

EXHIBIT 2

ALLEY



ADDRESS: 115 PELLY AVE. N.
RENTON, WA. 98055
PARCEL NUMBER: 722500-0415
ZONING: R-10

PELLY AVE. N.

EXHIBIT 4

City of Renton
Planning Division

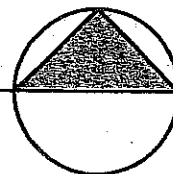
JAN 14 2010

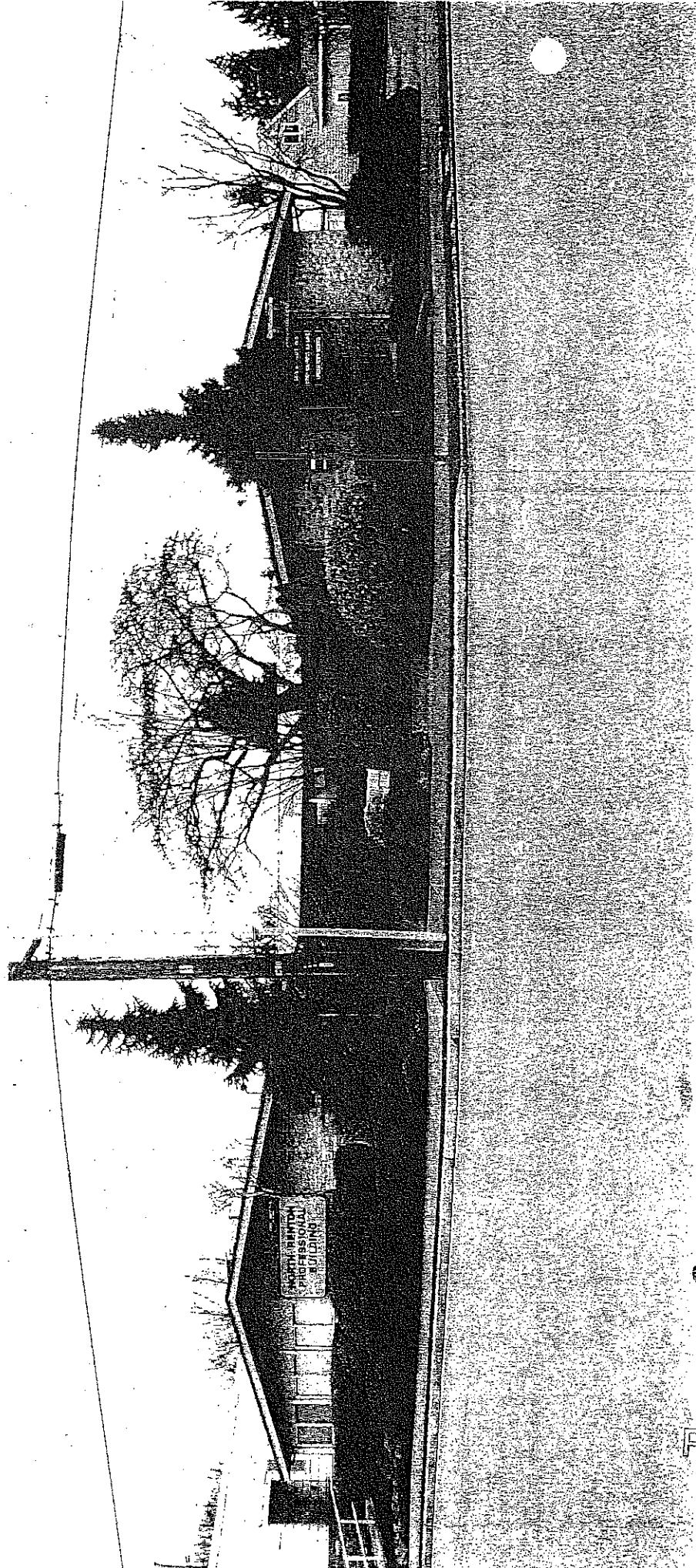
RECEIVED

SITE PLAN SKETCH

1" = 20'-0"

NORTH





E-FACE

EXHIBIT 5

City of Renton
Planning Division

JAN 14 2010

RECEIVED